IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.490 OF 2004

Smt. Hirabai Nana Jadhav .. Appellant

Versus

Lord Nileshwar DEvasthan Vadoli

Nileshwar Through

Jaganath Bala Gurav & ors. .. Respondents

Mr.Milind Deshmukh for appellant

CORAM : P.V.KAKADE, J.

DATE : 10TH JUNE 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Karad dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Karad decreeing the plaintiffs suit to recover possession of the suit property.

2. I heard the learned counsel for the appellant-defendant. Perused the record.

3. The plaintiff filed the suit for recovery of possession on the basis of title, which was in possession of the defendant. The case of the defendant was that the property was mortgaged with him as early as in the year 1943 and since then he was in possession of the property as mortgagee. However, the learned trial judge on the basis of evidence on record came to the conclusion that the plaintiff had failed to prove the so-called oral mortgage. The defendant had also failed to prove the improvement of the land to the extent of Rs.5000/=. The suit was also found within limitation and as such the suit came to be decreed by the lower court. The appeal was carried to the District Court, Satara. The learned Addl. District Judge heard both the sides and adjudicated that the findings recorded and the order passed by the lower court was just, legal and proper and therefore dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that the only

issue involved in this appeal is regarding alleged mortgage between the parties. The learned appellate court judge has come to the conclusion that the Trust was the owner of the suit land and the concept of oral mortgage was not recognised by law and therefore, the appeal was dismissed.

5. Taking into account the reasoning adopted and findings recorded by both the courts below I do not see any reason for inference, as the available evidence is properly appreciated by both the courts below. There is no substantial question of law involved in this appeal and as such the appeal stands dismissed.

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